

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COMES NOW, Plaintiff Brandon Tole (“Plaintiff”), by and through the undersigned counsel, and hereby submits the following Motion for Attorneys’ Fees and Costs and Memorandum of Points and Authorities in support of thereof.

1. INTRODUCTION

The Court ordered Plaintiff to file his motion reasonable attorneys' fees and costs by December 20, 2024. Dkt. #144. The Parties filed the Stipulated Motion for Entry of Consent Decree on December 20, 2024 in advance of this Motion. Dkt. 147. In conjunction with entry of

1 the Consent Decree, and pursuant to 38 U.S.C. § 4323(h)(2), Plaintiff respectfully submits this
 2 motion for \$1,630,585 in attorneys' fees, and \$15,442.11 in costs, and additional attorneys' fees
 3 in preparing a reply brief if this motion is opposed.

4 The attorneys' fees and costs requested are reasonable, particularly considering the
 5 aggressive litigation posture taken by Defendant Amazon.com Services, LLC ("Defendant" or
 6 "Amazon"). Amazon forced Plaintiff to litigate his USERRA claim all the way through the eve of
 7 trial and aggressively defended this case throughout. Having forced Plaintiff to incur these fees
 8 and costs through its own conduct, Amazon should not be heard to complain now that they are
 9 unreasonable.

10 **II. BACKGROUND**

11 This action was initially filed as a putative class action on May 4, 2022, on behalf of
 12 Plaintiff Yasmine Mahone and all others similarly situated. Dkt. 1. On August 10, 2022, a First
 13 Amended Complaint ("FAC") was filed to add Plaintiff Dain Olson and all others similarly
 14 situated. Dkt. 19.

15 On September 23, 2022, Defendant filed a Motion to Dismiss ("MTD") the FAC [Dkt. 28]
 16 and on December 1, 2022, this Court issued an Order granting in part and denying in part the MTD.
 17 Dkt. 34.

18 On January 4, 2023, Plaintiffs filed a Second Amended Complaint ("SAC") adding
 19 Plaintiff Brandon Tole and all others similarly situated. Dkt. 44. On February 3, 2023, Defendant
 20 filed a MTD the SAC. Dkt. 45. On April 7, 2023, after discovery and an evidentiary hearing
 21 regarding Plaintiff Olson's claims, this Court issued its Findings of Fact and Conclusions of Law,
 22 dismissing Plaintiff Olson's claims based on laches. Dkt. 56. On April 10, 2023, this Court issued
 23 an Order denying Amazon's MTD as to Plaintiffs Mahone and Tole. Dkt. 57.

24 On October 13, 2023, Plaintiffs filed a Motion for Class Certification [Dkt. 70] and on July
 25 29, 2024, this Court issued an Order Denying Plaintiffs' Motion for Class Certification. Dkt. 120.

26 On August 5, 2024, Amazon filed a Motion for Summary Judgment ("MSJ"). Dkt. 121.

1 On September 25, 2024, the Court granted summary judgment to Amazon as to Plaintiff Mahone's
 2 claims but denied summary judgment as to Plaintiff Tole's claims. Dkt. 127.

3 On November 19, 2024, the Parties filed a Notice of Settlement as to all of Plaintiff Tole's
 4 claims and causes of action. Dkt. 143.

5 **III. LEGAL STANDARDS**

6 **A. A Consent Decree Authorizes a Motion for Attorneys' Fees and Costs**

7 USERRA authorizes a court to "award any such person who prevails in such action or
 8 proceeding reasonable attorney fees, expert witness fees, and other litigation expenses." 38 U.S.C.
 9 § 4323(h)(2). Generally, "a plaintiff must prevail on 'any significant claim affording some of the
 10 relief sought'" to obtain an attorneys' fee award. *Fink v. City of New York*, 154 F. Supp. 2d 404,
 11 406 (E.D.N.Y. 2001), quoting *Texas Ass'n v. Garland*, 489 U.S. 782, 791 (1989). To qualify as a
 12 *prevailing party*, a party must secure either a judgment on the merits or a court-ordered consent
 13 decree. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S.
 14 598, 604, (2001) ("[E]nforceable judgments on the merits and court-ordered consent decrees create
 15 the 'material alteration of the legal relationship of the parties' necessary to permit an award of
 16 attorney's fees.").

17 **B. USERRA Reasonable Attorneys' Fees – Lodestar Method**

18 "The essential goal in shifting fees . . . is to do rough justice, not to achieve auditing
 19 perfection." *Fox v. Vice*, 563 U.S. 826, 838 (2011). The Supreme Court has emphasized that "the
 20 determination of fees 'should not result in a second major litigation.'" *Id.* at 838 (citing *Hensley v.*
 21 *Eckerhart*, 461 U.S. 424, 437 (1983)). To determine the fee award for a prevailing party, the Court
 22 begins by calculating a lodestar "by taking the number of hours reasonably expended on the
 23 litigation times a reasonable hourly rate." *Blum v. Stenson*, 465 U.S. 886, 888 (1984); *see also*,
 24 *Cunningham v. County of Los Angeles*, 879 F.2d 481, 484 (9th Cir. 1988), cert. denied 493 U.S.
 25 1035 (1990); *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000) (citing *Hensley*, 461
 26 U.S. at 433).

1 “The lodestar determination has emerged as the predominate element of the analysis’ in
 2 determining a reasonable attorney’s fee award.” *Morales v. City of San Rafael*, 96 F.3d 359, 363
 3 (9th Cir. 1996) (quoting *Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th Cir. 1987)). The
 4 lodestar figure is presumptively reasonable. *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992).

5 “Under federal law, the Court determines the hourly rate by considering the ‘evidence
 6 produced by the parties, including fee rates of other attorneys in similar practices, awards in
 7 comparable cases, counsel’s experience and reputation level, and the market rates, as well as two
 8 additional Kerr factors: the novelty/difficulty of the issues and the preclusion of other work.’”

9 *Kingston v. Int'l Bus. Machs. Corp.*, CASE NO. C19-1488 MJP, 1 (W.D. Wash. Jun. 29, 2021)
 10 (quoting *Dang v. Cross*, 422 F.3d 800, 814 (9th Cir. 2005)).

11 **1. Reasonable Hours**

12 The number of hours reasonably expended on a matter for the purpose of an attorney fee
 13 award is the same hours the attorney would bill the client in a standard hourly fee setting. *Hensley*,
 14 461 U.S. at 434. “Hours that are not properly billed to one’s *client* also are not properly billed to
 15 one’s *adversary* pursuant to statutory authority.” *Id.* (quoting *Copeland v. Marshall*, 205 U.S. App.
 16 D.C. 390, 401 (1980) (emphasis in original)); *accord Moreno v. City of Sacramento*, 534 F.3d
 17 1106, 1111 (9th Cir. 2008) (“The number of hours to be compensated is calculated by considering
 18 whether, in light of the circumstances, the time could reasonably have been billed to a private
 19 client”).

20 A “district court can impose a small reduction, no greater than 10 percent—a ‘haircut’—
 21 based on its exercise of discretion and without a more specific explanation.” *Moreno*, 534 F.3d at
 22 1112. “But gut feelings are not enough; if the district court is going to make substantial cuts to a
 23 winning lawyer’s fee request, it needs to explain why with sufficient specificity that the lawyer can
 24 meaningfully object . . .” *Id.* at 1116 (vacating award and remanding matter where district court
 25 failed to give clear explanation for a fee award that was approximately 40% lower than requested).

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2. Reasonable Hourly Rates

A reasonable hourly fee is the “rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation. *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 980 (9th Cir. 2008) (quoting *Blum v. Stenson*, 465 U.S. 895 n.11). An attorney may establish the reasonable rate by declarations. *Id.* Fee awards made to the attorneys by other courts in the area are also competent evidence of the reasonable rate. *Id.*

Here, the hourly rates sought by Plaintiff's counsel are reasonable and comparable to prevailing rates in the market. Plaintiff's counsel has submitted the 2023 Litigation Hourly Rate Survey & Report published by National Association of Legal Fee Analysis ("NALFA") to support their hourly rates. Exhibit 3 to the Declaration of Gene J. Stonebarger ("Stonebarger Decl."); *see also* Declaration of Terry Jesse, National Association of Legal Fee Analysis, in Support of Plaintiff's Motion for Attorneys' Fees and Costs. Plaintiff's counsel has established through their respective declarations the significant experience and reputation levels that they possess, and the significant resources dedicated to this case. *See* Stonebarger Decl., Lawler Decl., Wilson Decl., and Kalish Decl. Further, this case presented novel and difficult issues against the largest private employer in the world. Among the novel and difficult issues was application of the law to the complicated promotion and compensation systems and methodologies utilized by Amazon. Even gaining access to relevant information relating to these systems and methodologies required Plaintiff's counsel to seek and obtain Court orders compelling their productions. Dkt. 77.

IV. ARGUMENT

A. Plaintiff Tole has Prevailed on a Significant Claim which Authorizes an Attorneys' Fee Award

Through the Settlement Agreement and Consent Decree that will alter the legal relationship between the Parties, Plaintiff has prevailed on his USERRA claim affording him relief sought in this Action, which authorizes an award of reasonable attorney fees and other litigation expenses. 38 U.S.C. § 4323(h)(2). Plaintiff has found no case where a court denied a successful USERRA

1 plaintiff his attorneys' fee application. The cases focus, instead, on the calculation of the correct
 2 fee owed to a successful USERRA plaintiff. *See, e.g. Serrichio v. Wachovia Securities, LLC*, 606
 3 F. Supp.2d 256, 267 – 268 (D. Conn. 2009) (“As the prevailing party, [Plaintiff] is *entitled to* fees
 4 and costs, which he may detail in an application filed in accordance with Federal Rule of Civil
 5 Procedure 54(d).” (emphasis added)); *Fryer v. A.S.A.P. Fire Safety Corp.*, 750 F. Supp. 2d 331,
 6 335 (D. Mass 2010) (“In light of plaintiff’s recovery under USERRA, … he is a prevailing party
 7 and thus *entitled* to attorneys’ fees and costs.” (emphasis added)).

8 It is difficult to imagine a more fitting case than this one for the award of attorneys’ fees
 9 under USERRA. First, without very experienced trial counsel well-versed in USERRA, Plaintiff
 10 had little hope of vindicating his statutory rights intended to protect the nation’s service members.
 11 Second, USERRA’s attorneys’ fees provision was intended to attract capable counsel to undertake
 12 just this sort of representation to protect service members who have protected us. Third, Amazon’s
 13 litigation conduct contributed to the protracted and labor-intensive nature of this case.

14 In the Ninth Circuit the degree of the attorneys’ success “is the most critical factor in
 15 determining the appropriate amount of attorney fees” to award a prevailing party. *Barnard v.*
 16 *Theobald*, 721 F.3d 1069, 1077 (9th Cir. 2013) (citing *Henlsey*, 461 U.S. at 436) (internal
 17 quotations omitted). There is no doubt that Plaintiff’s legal team overcame substantial odds to
 18 resolve this case and obtain significant recovery for Plaintiff Tole, despite Amazon’s corporate
 19 hubris. Indeed, Plaintiff’s counsel fully vindicated the purposes of USERRA to his benefit.

20 **1. Plaintiff’s Attorneys Seek Compensation for Actual Hours Worked**

21 When an attorney represents a client but does not bill that client for services rendered, there
 22 is a presumption that the hours spent were necessary. *Moreno*, 534 F.3d at 1112. In discussing a
 23 fee awarded to a lawyer who prevailed on a civil rights suit under 42 U.S.C. § 1988, the Ninth
 24 Circuit explained:

25 It must also be kept in mind that lawyers are not likely to spend unnecessary time
 26 on contingency fee cases in the hope of inflating their fees. The payoff is too

1 uncertain, as to both the result and the amount of the fee. It would therefore be the
 2 highly atypical civil rights case where plaintiff's lawyer engages in churning. By
 3 and large, the court should defer to the winning lawyer's professional judgment as
 4 to how much time he was required to spend on the case; after all, he won, and might
 5 not have, had he been more of a slacker.

6 *Moreno*, 534 F.3d at 1112.

7 **a. All the time for which Plaintiff's Counsel seeks compensation was
 8 reasonably expended on the litigation and beneficial to Plaintiff Tole's
 9 claims**

10 It is expected that Amazon will attack Plaintiff's motion for the time Plaintiff's counsel
 11 spent on matters it does not deem "attributable to" Plaintiff Tole's claims, including, but not
 12 limited to, any time prior to Plaintiff Tole joining the lawsuit on January 4, 2023. However, if
 13 made this attack will miss its target. "Where a plaintiff has obtained excellent results, his attorney
 14 should recover a fully compensatory fee." *Hensley*, 461 U.S. at 435. And "[i]n these circumstances
 15 the fee award should not be reduced simply because the plaintiff failed to prevail on every
 16 contention raised in the lawsuit." *Id.*

17 Attorneys entitled to fee awards may also seek their fees for pre-complaint investigation
 18 and preparation when that time is "reasonably expended *on the litigation*." *Webb v. Bd. of Educ.*,
 19 471 U.S. 234, 243 (1985) (emphasis in original) (quoting *Hensley*, 461 U.S. at 433). "Most obvious
 20 examples are the drafting of the initial pleadings and the work associated with the development of
 21 the theory of the case." *Id.*

22 In the real world, litigation can be complex, "involving multiple claims for relief that
 23 implicate a mix of legal theories and have different merits." *Fox*, 563 U.S. at 833. "Some claims
 24 succeed; others fail." *Id.* "In short, litigation is messy, and courts must deal with this untidiness in
 25 awarding fees." *Id.* Generally, "work on an unsuccessful claim cannot be deemed to have been
 26 expended in pursuit of the ultimate result achieved . . . and therefore no fee may be awarded for
 27 services on the unsuccessful claim." *Hensley*, 461 U.S. at 435. This rationale for discounting hours
 28 spent on unsuccessful claims does not apply, however, where both the successful and unsuccessful
 29 claims arose from the same common core of facts or were based on related legal theories. *Id.* This

1 is so because "[m]uch of counsel's time will be devoted generally to the litigation as a whole,
 2 making it difficult to divide the hours expended on a claim-by-claim basis." *Id.* Thus, fees are
 3 appropriately excluded from the lodestar only "when different claims for relief are not
 4 interconnected, that is, when the claims rest on different facts and legal theories." *Figueredo-*
 5 *Torres v. Toledo-Davila*, 232 F.3d 270, 278 (1st Cir. 2000) (citing *Coutin v. Young & Rubicam*
 6 *P.R.*, 124 F.3d 331, 339 (1st Cir. 1997)).

7 Attorney fee awards should also include the time spent preparing and litigating a motion
 8 to obtain a fee award. *Camacho*, 523 F.3d at 981. "In statutory fee cases, federal courts, including
 9 our own, have uniformly held that time spent in establishing the entitlement to and amount of fees
 10 is compensable." *Id.* (citing *In re Nucorp Energy, Inc.*, 764 F.2d 655, 659-660 (9th Cir. 1985), *see*
 11 *also*, *Guerrero v. Cummings*, 70 F.3d 1111, 1113 (9th Cir. 1995) (holding that "fees on fees" are
 12 generally recoverable)).

13 **b. Tasks attributable to Mr. Tole's successful claims predate his addition to
 14 the Second Amended Complaint**

15 Unsurprisingly, Plaintiff's counsel spent substantial hours investigating the original claims
 16 asserted in the Complaint. This included a host of ethical, factual, and diligence responsibilities
 17 required by Plaintiff's counsel to both the client and the court, such as reviewing the corporate
 18 structure of Amazon and its relevant entities, their relationships with each other, their policies and
 19 procedures related to their employees with military service obligations, and whether those policies
 20 and procedures complied with USERRA, in general and specifically to each named plaintiff.

21 Furthermore, Plaintiff's counsel spent substantial hours researching the theories of liability
 22 under USERRA and the case law to support them. This investigation and research, while predating
 23 Mr. Tole's addition to the SAC in January 2023, certainly would have occurred even had the SAC
 24 been the first pleading in the case. In other words, it was "work associated with the development
 25 of the theory of the case" and accordingly, all this time was necessary and attributable to Mr. Tole's
 26 ultimately successful claims *Webb*, 471 U.S. at 243. For instance, all the time spent on matters

1 such as researching and drafting the FAC and opposing Amazon's Motions to Dismiss, were of
 2 the "same common core of facts or were based on related legal theories." *Hensley*, 461 U.S. at
 3 435.

4 **c. Tasks specific to Ms. Mahone and Mr. Olson are excluded from Plaintiff's
 calculations.**

5 Plaintiff's counsel have excluded tasks specifically related to Ms. Mahone and Mr. Olson,
 6 and unrelated to Plaintiff Tole, from their respective lodestar calculations reflecting the attorneys'
 7 fees sought through this motion. For example, tasks specifically attributable to Mr. Olson's laches
 8 defense, such as his deposition and evidentiary hearing, and the entire meet and confer process
 9 related thereto are not included; tasks specifically attributable to Ms. Mahone's claims for
 10 liquidated damages and her deposition are not included. Yet, some of the tasks involved in this
 11 litigation applied to *all* Plaintiffs, cannot be parsed, and/or would have been incurred in any event;
 12 and are properly included in this motion.

13 For example, Plaintiffs did not propound their first set of discovery requests to Amazon
 14 until June 2023, and were propounded by Plaintiffs Mahone and Tole jointly. And with very few
 15 exceptions, the requests were similarly tailored to information and documents in Amazon's
 16 possession, custody and control applicable to all the then-existing Plaintiffs, Ms. Mahone and Mr.
 17 Tole, but not including Mr. Olson. These tasks were objectively necessary and attributable to Mr.
 18 Tole's claims and cannot be severed without penalizing Plaintiff's counsel on a technicality.

19 **2. Plaintiff's Attorneys' Regular Rates are Reasonable**

20 As the Ninth Circuit has explained,

21 [E]ven if an attorney is willing to agree to work on a case for less than a reasonable
 22 fee, he will be entitled to a reasonable fee when the client asks that the fee be
 23 awarded out of the defendant's pocket. That creates no windfall for the attorney
 24 because he will merely receive a reasonable hourly fee for all hours reasonably
 25 spent. And it creates no windfall for clients because statutory awards in excess of
 26 private fee agreements should be used to compensate the attorney in full.

27 *US ex rel Virani*, 89 F. 3d 574, 578 (internal quotations and citations omitted)).

28 The rates of the attorneys of all four of the firms that represented Mr. Tole throughout this

1 litigation are comparable to “prevailing market rates in the relevant community.” *See Gonzalez v.*
 2 *City of Maywood*, 729 F.3d 1196, 1205-1206 (9th Cir. 2013). Furthermore, they reflect the specific
 3 experience, and the expertise that Plaintiff’s attorneys brought to this case, each with different skill
 4 sets. Stonebarger Decl., Lawler Decl., Wilson Decl., and Kalish Decl.

5 Plaintiff’s counsel’s customary rate must also be measured against the prevalent market rate
 6 in the district in which the relevant trial court sits. *See Blum*, 465 U.S. at 896, n.11; *see also*
 7 *Gonzalez*, 729 F.3d at 1205-1206. As set forth in the NALFA Report at page 93 of Exhibit 3 to the
 8 Stonebarger Decl., Plaintiff’s counsel’s hourly rates are comparable to the prevailing market rate
 9 in the Seattle legal community for attorneys with similar experience, skill, expertise, and
 10 reputation; which are premium Tier 4 rates falling into the top 14% of plaintiff attorneys’ hourly
 11 rates in complex litigation (ranging from \$951 to over \$1,300),, premium Tier 3 rates falling into
 12 the top 38% (ranging from \$701 to \$950) and premium Tier 2 rates falling into the top 80%
 13 (ranging from \$451 to \$700). Stonebarger Decl., Ex. 3, p. 93. Likewise, as set forth in the NALFA
 14 Report, Plaintiff’s counsel’s hourly rates are comparable to the prevailing market rate nationally
 15 for attorneys with similar experience, skill, expertise and reputation. Stonebarger Decl., Exhibit 3,
 16 pp. 118, 124, 125 (reflecting national “2023 Rate Data for 23-25 Years of Litigation Experience”
 17 showing premium Tier 4 hourly rates ranging from \$951 to over \$1,300, premium Tier 3 hourly
 18 rates ranging from \$701 to \$950, and premium Tier 2 hourly rates ranging from \$451 to \$700).

19 In one of the only published opinions to specifically analyze a motion for attorneys’ fees
 20 in a USERRA case, a District Court found several factors that gave rise to an hourly rate above
 21 the prevailing market rate. *Fink*, 154 F. Supp. 2d at 407-409.

22 The Court wrote:

23 [L]odestar traditionally reflects such factors as time and labor required, novelty
 24 and difficulty of issues, skill required, loss of other employment in taking the
 25 case, whether the fee is fixed or contingent, time limitations imposed by the client
 26 or circumstances, the amount involved and result obtained, counsel’s experience,
 27 reputation and ability, the undesirability of the case and the nature and length of
 28 the relationship with the clients.

1 *Id.* at 407-408. The Court then opined, “In many of these respects, Fink’s case was an exceptional
 2 one.” *Id.*, at 408. This case is also an exceptional one which required significant time, labor and
 3 specialized litigation skills in dealing with novel and difficult issues against a large corporation
 4 with practically unlimited resources available to it in defending the case.

5 Most illustrative of the similarities between *Fink* and the present case are the factors in
 6 supporting the Court’s decision to award a higher prevailing hourly rate: “quasi-contingent nature
 7 of the representation, the riskiness of the case itself, the experience of Fink’s counsel, and the fact
 8 that Fink prevailed on absolutely all his claims.” *Id.*

9 Plaintiff Tole’s representation in this case was purely contingency. Lawler Decl., ¶ 15, Exh.
 10 2. The risk in this case was significantly higher than most, given the odds of obtaining a unanimous
 11 jury verdict against Amazon in its own backyard. The experience of Plaintiff Tole’s counsel is
 12 extensively described more completely below and in each respective Declaration; Mr. Lawler is a
 13 23-year trial and appellate attorney and considered a national authority on USERRA, and is a
 14 retired United States Marine Corps Lieutenant Colonel; Mr. Stonebarger is a highly respected 25-
 15 year trial attorney with extensive class action, trial and appellate experience; Mr. Kalish is a 20-
 16 year trial attorney with extensive employment law and trial experience; and Mr. Wilson is a nine-
 17 year attorney, experienced in civil litigation, employment law, and USERRA, as well as an
 18 actively-serving member of the United States Marine Corps Reserve Component, recently selected
 19 for promotion to Lieutenant Colonel.

20 Accordingly, Plaintiff’s counsel’s rates are completely supported by the *Fink* factors and
 21 should be approved. The chart below shows the hours worked, the hourly rates and the total
 22 lodestar incurred by the respective attorneys for Plaintiff in this case:

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ATTORNEY	HOURLY RATE	HOURS	LODESTAR
Gene J. Stonebarger	\$1,200	664.9	\$797,880
Brian J. Lawler	\$900	601.4	\$511,120
Kevin L. Wilson	\$600	439.1	\$263,460
Daniel Kalish	\$775	68	\$52,700
Jill Malat	\$875	6.2	\$5,425
TOTALS			\$1,630,585

a. Pilot Law, P.C.

Pilot Law’s rates are comparable to those of other firms in San Diego and Seattle and reflect the specific experience and in fact expertise that Plaintiff’s attorneys brought to this case. Lead counsel, Brian Lawler, has been practicing law since 2002 and has been a litigator for his entire career, with experience litigating cases all over the country. *See* Pilot Law firm resume, attached as Ex. 3 to Declaration of Brian J. Lawler (“Lawler Decl.”); Lawler Decl. ¶¶ 2-7, 11, 12, 16. And since 2009, Pilot Law has concentrated its practice in USERRA law, protecting the rights of servicemembers in disputes with their civilian employers. *Id.*, ¶¶ 3, 4, 5, 6, 7. Mr. Lawler’s billable rate for USERRA cases is \$900.00 per hour and is well within the range of hourly rates for litigators in San Diego and Seattle with the experience level he has. *Id.* ¶¶ 11, 12; Declaration of Terry Jesse (“Jesse Decl.”), Exh. 3 to Declaration of Gene J. Stonebarger (“Stonebarger Decl.”); Stonebarger Decl., ¶ 9.

In addition, Mr. Lawler is considered a national authority on USERRA. Lawler Decl. ¶ 4. The Service Members Law Center (“SMLC”) of the former Reserve Officers Association (now Reserve Organization of America) (“ROA”) fielded USERRA inquiries from service members until it was disestablished in 2015. The ROA is one of the largest, and the only Congressionally chartered, lobby groups in the country whose primary function is to support members of the Reserve and National Guard. Lawler Decl. ¶ 4. Mr. Lawler is one of only a handful of attorneys nationwide to whom the SMLC referred USERRA cases. *Id.* Mr. Lawler has a published opinion

1 as lead counsel in a USERRA case that was the impetus in getting Congress to clarify USERRA
 2 in 2011 and thereby statutorily overrule the Fifth Circuit's holding that harassment and hostile
 3 work environment claims were not cognizable under USERRA. *Carder v. Continental Airlines*,
 4 636 F.3d 172 (5th Cir. 2011); Lawler Decl. ¶ 3. And Mr. Lawler wrote an article on USERRA that
 5 was published by the American Association for Justice and reprinted with permission by the
 6 SMLC. Lawler Decl. ¶ 5.

7 Most recently, and perhaps most indicative of Mr. Lawler's expertise in USERRA, on June
 8 29, 2022, the Supreme Court of the United States issued its opinion in *Torres v. Texas Dept. of*
 9 *Public Safety*, 597 U.S. 580 (2022). The Court reversed a State of Texas intermediate appellate
 10 court decision which held Texas was immune from a USERRA lawsuit brought in Texas State
 11 Court. The Supreme Court's opinion means no State may assert sovereign immunity as a defense
 12 to a USERRA lawsuit and paved the way for potentially tens of thousands of servicemembers
 13 whose USERRA rights were violated by their State or State agency employers to bring these
 14 lawsuits. Lawler Decl. ¶ 7. On September 29, 2023, after a five-day trial, a unanimous Texas jury
 15 awarded Mr. Torres nearly \$2.5 million in damages and a subsequent judgment by the Court
 16 awarded him an additional \$1.3 million in prejudgment interest. *Id.*

17 Several times since 2019, the Merit Systems Protection Board, the sole jurisdiction for
 18 Federal employees with USERRA complaints, has awarded Mr. Lawler attorneys' fees of \$700
 19 per hour in USERRA cases. *See Woods v. Dept. of Veterans Affairs*, MSPB Docket No. CH-4324-
 20 19-0031-A-1; *Colicelli v. Dept. of Veterans Affairs*, MSPB Docket No. DC-4324-19-0769-A-1;
 21 *Colicelli v. Dept. of Veterans Affairs*, MSPB Docket No. DC-4324-19-0769-A-2; *Robinson v.*
 22 *Dept. of Veterans Affairs*, MSPB Docket No. DC-4324-21-0219-C-1 (Motion for Enforcement);
 23 and *Robinson v. Dept. of Veterans Affairs*, MSPB Docket No. DC-4324-21-0219-A-1. Lawler
 24 Decl. ¶ 10.

25 The "lodestar" calculation for Pilot Law, P.C., then, is reflected by its billing records—as
 26 it is the actual hours worked multiplied by the hourly rates to reach the actual fees accrued. Thus,

1 the total amount owed in attorneys' fees to Pilot Law, P.C. is \$511,120.00. Pilot Law, P.C. also
 2 has compensable litigation costs in the amount of \$12,760.47.

3 **b. Stonebarger Law, A Professional Corporation**

4 Gene J. Stonebarger, is the founder and owner of Stonebarger Law, APC. Mr. Stonebarger
 5 has extensive experience in the prosecution of various areas of complex civil litigation including
 6 USERRA Class Action litigation matters, consumer and employee Class Actions, and complex
 7 business litigation. Stonebarger Decl., ¶2. Mr. Stonebarger has more than 25 years of experience
 8 in litigating Class Actions, including more than 15 years of experience litigating USERRA cases.
 9 *Id.* Mr. Stonebarger has successfully served as Class Counsel or Co-Class Counsel prosecuting
 10 numerous Class Actions to Judgment against large corporations, through either trial or settlement,
 11 recovering hundreds of millions of dollars in benefits for individuals across the country. *Id.* Mr.
 12 Stonebarger's current resume setting forth his substantial experience in more detail is attached as
 13 Exhibit 1 to the Stonebarger Decl.

14 In 2014, Mr. Stonebarger was the recipient of the Consumer Champion Award from the
 15 Consumer Federation of California; and received the 2012 California Lawyer Attorney of the Year
 16 Award (the "CLAY Award") from California Lawyer magazine for the significant impact his legal
 17 work made in the area of Consumer Rights. *Id.* at ¶3. Mr. Stonebarger has been named as a Top-
 18 Rated Northern California Super Lawyer in the area of Class Actions & Mass Torts for each of the
 19 past 10 years 2014-2024, which is an honor given to the top 5% of attorneys in their respective
 20 fields as voted on by their peers. *Id.*

21 Mr. Stonebarger has been involved in USERRA cases consistently over the past 15 years.
 22 *Id.* at ¶5. Mr. Stonebarger served as Co-Lead Class Counsel, along with Mr. Lawler, on a USERRA
 23 case against United Airlines which produced one of the largest monetary recoveries under military
 24 rights laws in history. (*Duffer v. United Continental Holdings, Inc.*, Northern District of Illinois,
 25 Case No. 1:13-cv-03756). *Id.*

26 Throughout the prosecution of this case, Plaintiff's counsel attempted to litigate the case

1 efficiently, and to working cooperatively with Amazon from a procedural standpoint, to streamline
 2 the litigation. *Id.* at ¶6. Mr. Stonebarger worked with co-counsel to utilize case management
 3 strategies to focus the litigation and coordinate work amongst Plaintiffs' Counsel to avoid
 4 duplication and inefficiency in the litigation. *Id.* Stonebarger Law has implemented a timekeeping
 5 and cost reporting protocol for "sound billing practices" to ensure that attorneys' fees and litigation
 6 expenses incurred are fair and reasonable. *Id.*

7 Stonebarger Law committed significant resources to litigating this complex case and
 8 expended the time, energy and financial resources necessary to lead this litigation to a resolution
 9 achieving the relief sought by Plaintiff Tole. *Id.* at ¶7. Mr. Stonebarger has personally spent over
 10 664 hours prosecuting this case to date. *Id.* Mr. Stonebarger has not included in its billing records
 11 any time incurred by members of his staff.

12 Mr. Stonebarger's current hourly rate for class action and complex business litigation is
 13 \$1,200 per hour. *Id.* Stonebarger Law's current lodestar is \$797,880. *Id.* In addition, Stonebarger
 14 Law has incurred compensable litigation costs in the amount of \$2,681.64. *Id.* Due to the
 15 significant commitment of time and law firm resources that Stonebarger Law dedicated to this
 16 case, the firm was required to turn down other representation in potential cases in which Mr.
 17 Stonebarger's representation was requested. *Id.* Mr. Stonebarger's detailed time records reflecting
 18 the hours incurred in this litigation relating to Plaintiff Tole have been submitted in conjunction
 19 with this motion. Stonebarger Decl., Ex. 2. Time incurred in the litigation that was not related or
 20 beneficial to Plaintiff Tole was removed from the time entries, including the removal of time
 21 entries that related solely to Plaintiffs Olson and/or Mahone.

22 Mr. Stonebarger's current hourly rate of \$1,200/hr. is consistent with the rates for an
 23 attorney with his stature, expertise, skill, experience and reputation in the legal community (the
 24 top 5% in Northern California as selected by his peers for the past 10 years, and the top attorney in
 25 California in the field of consumer rights in 2012); and the rate is comparable to the prevailing
 26 market rates in the Seattle legal community for an attorney of his skill, reputation, experience and

1 expertise in complex business litigation (a premium Tier 4 rate). Stonebarger Decl., ¶¶2-5, Ex. 3,
 2 pp. 93, 125; *see also* Jesse Decl. Mr. Stonebarger's current hourly rate of \$1,200/hr. was set in
 3 December 2023 based on the data available in the 2023 Litigation Hourly Rate Survey & Report
 4 published by the NALFA. Stonebarger Decl. at ¶9.

5 **c. Kevin Wilson Law PLLC**

6 Kevin L. Wilson is the founder and owner of Kevin Wilson Law PLLC and is co-counsel
 7 in this action. Mr. Wilson's rates are comparable to those of other firms in Seattle and reflect the
 8 specific experience and expertise that Plaintiff's attorneys brought to this case. Mr. Wilson has
 9 been practicing law since 2015 and has been a litigator for his entire career. He has represented
 10 USERRA plaintiffs all over the country, and has handled complex litigation, such as high value
 11 personal injury and insurance bad-faith cases, employment law investigations and cases - for both
 12 workers and employers, as well as business law. (*Id.*)

13 The "lodestar" calculation for Kevin Wilson Law PLLC then, is reflected by its billing
 14 records—as it is the actual hours worked multiplied by the hourly rates to reach the actual fees
 15 accrued. Mr. Wilson is a premium Tier 2 attorney according to the NALFA data and his hourly
 16 rate is \$600/hour. Exh. 3 to Stonebarger Decl. Thus, the total amount owed in attorneys' fees to
 17 Kevin Wilson Law PLLC is \$263,460.

18 **d. HKM Employment Attorneys LLP**

19 Daniel Kalish, a partner with HKM Employment Attorneys LLP ("HKM"). The attorneys
 20 at HKM who worked on this case are also highly qualified, as explained in the Declaration of
 21 Daniel Kalish, ¶¶ 2-9. Mr. Kalish has been practicing law for over twenty years, and he is the
 22 founder and Managing Partner of HKM, a law firm with over thirty offices in over 20 states. *Id.* ¶
 23 4. Mr. Kalish graduated Harvard College with honors and then attended Yale Law School, where
 24 he was an editor of the Yale Law Journal. *Id.* After law school, Mr. Kalish clerked for a federal
 25 judge before working in commercial litigation defense (Wiggin and Dana LLP and Perkins Coie
 26 LLP). *Id.* After spending five years at the King County Prosecutor's Office, where he tried (first

1 chair) several cases, Mr. Kalish founded HKM. *Id.* at ¶¶ 4-5.

2 Jill Malat is an attorney with HKM Employment Attorneys LLP. Ms. Malat passed the July
 3 1993 California bar exam, and the February 1994 Washington Bar exam after graduating from the
 4 University of the Pacific McGeorge School of Law. Ms. Malat has over a decade of litigation
 5 experience and has been working with HKM Employment Attorneys LLP since November 2023
 6 practicing employment law exclusively.

7 The “lodestar” calculation for HKM Employment Attorneys LLP then, is reflected by its
 8 billing records—as it is the actual hours worked multiplied by the hourly rates to reach the actual
 9 fees accrued. Mr. Kalish and Ms. Malat are premium Tier 3 attorneys according to the NALFA
 10 data; Mr. Kalish’s hourly rate is \$775 per hour and Ms. Malat’s hourly rate is \$875 per hour. Exh.
 11 3 to Stonebarger Decl. Thus, the total amount owed in attorneys’ fees to HKM Employment
 12 Attorneys LLP is \$58,125.

13 **V. CONCLUSION**

14 For the foregoing reasons, Plaintiff respectfully requests that the Court grant this petition
 15 for an award of attorneys’ fees in the amount of **\$1,630,585**, costs and expenses in the amount of
 16 **\$15,442.11**, and additional attorneys’ fees if further briefing on this motion is necessary.

17
 18 *s/ Brian J. Lawler*
 19 Brian J. Lawler (admitted *pro hac vice*)
 20 PILOT LAW, P.C.
 21 4632 Mt. Gaywas Dr.
 22 San Diego, CA 92117
 23 Tel: 619-255-2398
 24 Email: blawler@pilotlawcorp.com

25
 26 WSBA 35815
 27 Daniel Kalish, Esq.
 28 HKM Employment Attorneys LLP
 600 Stewart Street, Suite 901
 Seattle, WA 98101
 Telephone: 206-838-2504
 Email: dkalish@hkm.com

1 Gene J. Stonebarger (admitted *pro hac vice*)
2 STONEBARGER LAW, APC
3 101 Parkshore Dr., Suite 100
4 Folsom, CA 95630
5 Tel: 916-235-7140
6 Email: gstonebarger@stonebargerlaw.com

7 Kevin L. Wilson (admitted *pro hac vice*)
8 KEVIN WILSON LAW PLLC
9 3110 Horton Avenue
10 Louisville, KY 40220
11 Telephone: 502-276-5050
12 Email: kevin@kwilsonlaw.com

13 *Counsel for Plaintiff*

14 **CERTIFICATE OF SERVICE**

15 I certify that on December 20, 2024, I electronically filed the foregoing document with the
16 Clerk of the Court using the CM/ECF system, which will send a notification of the filing to all
17 registered users of the CM/ECF system.

18 Dated: December 20, 2024

19 *s/ Brian J. Lawler*
20 Brian J. Lawler